

# Transcript of Proceedings

MONTGOMERY COUNTY, MARYLAND  
CHARTER REVIEW COMMISSION

In the Matter of:

QUESTION F: TO ESTABLISH COLLECTIVE  
BARGAINING WITH BINDING ARBITRATION  
FOR POLICE AND TO PROHIBIT STRIKES

QUESTION E: TO PROHIBIT SLUDGE  
TRENCHING IN RESIDENTIAL AREAS

Rockville, Maryland

September 30, 1980

## Acme Reporting Company

*Official Reporters*

1411 K Street, N.W.

Washington, D. C. 20005

(202) 623-4885



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2 CHARTER REVIEW COMMISSION

3 -----  
4 In the Matter of:

5 Question F - To Establish Collective  
6 Bargaining with Binding Arbitration  
7 for Police and To Prohibit Strikes

8 Question E - To Prohibit Sludge  
9 Trenching in Residential Areas  
10 -----

10 100 Maryland Avenue  
11 Rockville, Maryland

12 Tuesday,  
13 September 30, 1980

14 The above-entitled matter came on for hearing,  
15 pursuant to notice, at 7:45 p.m.

16 BEFORE: BRUCE ADAMS, CHAIRMAN  
17 JOHN J. SEXTON, VICE CHAIRMAN  
18 MARY BOERGERS, COMMISSIONER  
19 CHARLES G. DALRYMPLE, COMMISSIONER  
20 LOIS STONER, COMMISSIONER  
21 RONALD E. RESH, COMMISSIONER  
22 JOHN P. BANKSON, COMMISSIONER  
23 PATRICIA BILLINGS, COMMISSIONER  
24 WILLIAM J. CHEN, COMMISSIONER  
25 JULIE K. DAVIS, COMMISSIONER  
C. LAURENCE WISER, COMMISSIONER

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P R O C E E D I N G S

CHAIRMAN ADAMS: Ladies and gentlemen, I think we will begin. This is a public forum sponsored by the Montgomery County Charter Review Commission about Questions E and F that will be before the voters in November.

My name is Bruce Adams. I am the Chairman of the Commission.

The purpose of the forum is to begin and try to add to a public dialogue on these questions that were petitioned to the ballot through the State constitutional provision of citizen initiative. We have tried to -- We have invited the sponsors of the two proposed charter amendments and we have also invited representatives of the County Government who are knowledgeable about these issues to participate in this forum.

In addition, several people have signed up to testify after our invited guests and they will be given that opportunity. If anyone else is in the room who would like to sign up I suggest they talk to Justina Ferber on my far left who is our administrative assistant.

I have received a call or so from people who can't be here tonight who would like to submit something for the record and, of course, we will keep the record open for several days to do that.

The Charter Review Commission was established in

1 June of 1979 pursuant to a Charter Amendment that was approv  
2 several years ago. Our main function is to study charter  
3 issues and recommend ballot questions to the County Council.  
4 We held public hearings and had considerable deliberations  
5 and proposed four charter amendments in a report that we  
6 issued to the Council in May of this year. Those four  
7 amendments have been approved by the Council and will be on  
8 the ballot as Questions A through D, hence, the lettering,  
9 E through F, of these two amendments.

10 On my far left, next to Justina, is Ron Resh, Chuck  
11 Dalrymple, Lois Stoner, Mary Boergers. On my far right, Larry  
12 Wiser, Pat Billing, Bill Chen, Julie Davis and John Bankson.

13 We will begin tonight with Question F which is a  
14 proposal to establish collective bargaining with binding  
15 arbitration for the police and to prohibit police strikes.  
16 So, I would like to call on two witnesses from the Fraternal  
17 Order of Police to take about ten minutes or so, if they  
18 would, to summarize their proposal and make known to us their  
19 reasons for making the proposals. Then we will proceed to  
20 questions after that.

21 If you could just state your name for the record  
22 and your association with the F.O.P., please.

23 MR. KATZ: I am Allen Katz. I am an attorney in  
24 Gaithersburg and I represent the Fraternal Order of Police  
25 along with Richard Svertesky. I am associated with the group

1 that is interested in Question F. I think the official  
2 name of that group is Citizens for Effective Law Enforcement.  
3 They have registered with the Supervisor of Elections.

4 MR. SVERTESKY: My name is Richard Svertesky. I  
5 am a police officer assigned to the Bethesda District. For  
6 the past three years I have been chairman of the committee  
7 which represents police officer and meets with the county  
8 under the Meet and Confer legislation.

9 Montgomery County Police Officers are sponsoring  
10 Question F in the November election. Question F, if passed,  
11 will mandate the Montgomery County Council to enact legisla-  
12 tion to allow for an orderly process of negotiations with the  
13 police on issues which affect each officer's safety, welfare  
14 and career.

15 In addition to authorizing negotiations, Question  
16 F prohibits police officers from engaging in a strike or any  
17 type of work stoppage.

18 Montgomery County is the only large county in the  
19 state which does not authorize collective bargaining for  
20 police officers. We believe the time has come for our  
21 elected officials to recognize the individual and collective  
22 rights of the public sector employees and establish a formal  
23 mechanism for employee representation and negotiation on  
24 issues affecting working conditions, benefits and salaries.

25 Nothing short of collective bargaining is sufficient

1 in providing and opportunity for meaningful discussions  
2 between employer and employee in the absence of formal  
3 labor relations procedures, fraternalism or beneign neglect  
4 results, both of which are resented by professional police  
5 officers.

6 The Meet and Confer type procedure which was  
7 enacted in 1978, has proven to an unworkable process. In-  
8 stead of facilitating employee organizations in organzing and  
9 representing county workers, the Meet and Confer Employee  
10 Relations Act has erected barriers which prevent representa-  
11 tion. Further, Meet and Confer provides no impartial review  
12 plan regardless of the facts and merits of the issue. The  
13 individual making the rules also enforces them. When a  
14 dispute arises that usually leads to polarization where there  
15 is no commitment or compulsion to get things resolved. Meet  
16 and Confer is not negotiations, rather it is simply a meeting  
17 to discuss problems and issues which employees or management  
18 may raise.

19 This type of arrangement fails. After the issues  
20 are raised there is no process for resolving them. The  
21 result is that Meet and Confer goes no further than allowing  
22 for problems to be identified and articulated.

23 The unwillingness on the part of our elected  
24 officials to go further than this initial step adds frustra-  
25 tion and alienation to an already existing problem.



1           Meet and Confer type labor relations is nothing  
2 more than an employee suggestion box with the anonymity  
3 removed.

4           A genuine interest in commitment to good labor  
5 relations starts with the idea an employee is a valuable  
6 resource who can help decision makers and elected officials  
7 operate the government more effectively. Who better knows  
8 the problems in providing services than those who actually  
9 provide them.

10           This commitment can only be carried out by providing  
11 a formal structure to establish meaningful dialogues between  
12 employer and employee with both sides compelled to discuss  
13 and negotiate problems in good faith and willingness to seek  
14 resolution. We envision this formal structure to include  
15 procedures to authorize officers to organize and be repre-  
16 sented by the organization of their choice and to negotiate  
17 with the employer working conditions, benefits such as  
18 disability leave and hospitalization and the results of these  
19 negotiations to be reduced to writing and held binding on  
20 both parties.

21           Further, unfair labor practices should be defined  
22 for both management and the employee organization. And,  
23 most importantly, a procedure must be devised to handle  
24 disputes and impasses quickly, fairly and impartially.  
25 Nearly all experts in labor relations point to the necessity

1 of having a formal and impartial procedure for settling dis-  
2 putes as being the key to successful management/labor relations

3 If government fails to provide an impartial  
4 equitable method of resolving disputes the employees are left  
5 with two alternatives. First, they could give in and accept  
6 management's view which is very unlikely since impasses usually  
7 occur over issues being critical by employees. Second,  
8 employees could engage in a strike until management is  
9 willing to resume negotiations. In both situations the  
10 public suffers, either through lower performance by dis-  
11 gruntled, frustrated employees or by the temporary cessation  
12 of the essential public services. These situations can and  
13 must be avoided.

14 As professionals, we, more than most, realize how  
15 critical police protection and service really are for the  
16 citizens of this county.

17 We propose the following procedure for the resolu-  
18 tion of impasses. First, strike and work stoppages by  
19 police officers should be explicitly prohibited and this ban  
20 be strictly enforced. Second, all disputes arising out of  
21 the employees right to organize or involving a dually elected  
22 organization's right to represent employees for bargaining  
23 purposes or dispute involving recognition as the bargaining  
24 agent or involving the implementation or interpretation of  
25 any of the provisions of an agreement be resolved through the

1 use of a neutral arbitrator selected jointly by county  
2 officials and the employee representative with the power to  
3 make a final binding decision on the dispute.

4 Third, impasses reached as a result of an interest  
5 dispute such as salaries, cost of living adjustments, et  
6 cetera, should be resolved by a neutral fact finder, who,  
7 after reviewing the merits of the case, will make recommenda-  
8 tions to both parties for voluntary consideration and  
9 acceptance. The recommendations may also be a matter of  
10 public record.

11 What we have outlined above is a contemporary  
12 framework for management/labor relations in the public sector.  
13 The foundation of this framework is the consideration of  
14 characteristics distinctive to public sector employment;  
15 namely, the strike ban, the reliance on impartial third  
16 parties to peacefully settle disputes and consideration of  
17 the proper role of public opinion in politics.

18 The desire of employees to have a voice in dis-  
19 cussing working conditions which affect our whole lives is  
20 a desire which will only become stronger in the future years.  
21 Question F represents an opportunity for county voters and  
22 elected officials to say yes, we recognize the need of police  
23 officers to have a meaningful dialogue with management  
24 officials and we also recognize the need for the formal  
25 procedures to insure the dialogue does not break down.

1           Question F mandate is not a equality of actual  
2 bargaining power but procedural equality through impartiality.  
3 Question F will enable us here in Montgomery County to become  
4 a progressive jurisdiction in the field of public employee  
5 relations by establishing a realistic and viable balance  
6 between the public interest and the interest of public em-  
7 ployees.

8           Thank you, Mr. Chairman.

9           CHAIRMAN ADAMS: Thank you very much.

10          Mr. Katz, do you want to add anything to that?

11          MR. KATZ: No. Only that we have read -- perhaps  
12 two of the very few -- who have read the suggestions and  
13 recommendations of the Charter Review Commission had in its  
14 pamphlet and in its report and I might point out that none  
15 of them have been implemented. In fact, none of them are  
16 being discussed that we know of. Of course, your recommenda-  
17 tions were to bolster essentially Meet and Confer and then  
18 at some point get a dialogue going as to whether collective  
19 bargaining should come along down the road somewhere.

20          I think it is fair to say that by the actionsof  
21 the county at least that this is certainly a back burner  
22 issue and no movement has been made toward it. Unfortunately,  
23 in a way, the only way that the police or any employee group  
24 has of getting this sort of question, that being collective  
25 bargaining, to move along faster is to go on the public

1 referendum. And, there isn't the time for the type of  
2 detail and thorough discussions in public at any rate that  
3 you have had on the first four of the charter suggestions  
4 or the propositions.

5 Our group or the group of the current police are  
6 people that would be involved with this. I know when we  
7 spoke previously and when this idea I believe came up that  
8 the Charter Review Commission at least talk to us and others  
9 and begin what you call the dialogue, the real question that  
10 I believe was bothering me, Mr. Chairman, if not others,  
11 was this question of binding arbitration. While it is true  
12 that the language of the charter change would involve some  
13 binding arbitration, our group is certainly interested in  
14 going on record now, and I believe we can speak for the  
15 police, when we say binding arbitration would not be on issues  
16 such as salaries, cost of living adjustments and things of  
17 that sort but the fact finding would be our suggestion with  
18 regard to that who would review the merits, and as Rich  
19 Svertesky said, make recommendations to both parties for  
20 voluntary consideration and acceptance.

21 These, of course, would be a matter of public  
22 record which is not what we have now in any sense under  
23 Meet and Confer.

24 The other major point I think is important to  
25 discuss is that under collective bargaining an agreement

1 would result instead of the non-binding position papers  
2 that currently result. While it is a nice idea to say that  
3 Meet and Confer process should be beefed up, no matter what  
4 you do to it, in order to make it remain a Meet and Confer  
5 process you are not going to come up with a binding agreement  
6 because once you do that you are in another area. You are  
7 in the collective bargaining area whether you wish to call it  
8 that or not.

9           The other things is that unfortunately in this area  
10 of Meet and Confer or union rights or employee rights there  
11 are catch phrases that apparently both people a great deal.  
12 The Fraternal Order of Police, for example, is not a union,  
13 but it is an employee organization and wishes to remain the  
14 same and nationally has rules against strikes and work  
15 stoppages. The police, I think more than most, realize that  
16 it is just not the best way to go about obtaining proper  
17 employee benefits. However, as a trade off to the traditional  
18 strike or work stoppage, we have drafted this legislation  
19 in order to resolve any impasse that might develop.

20           For those reasons Question F has been petitioned  
21 to the referendum.

22           CHAIRMAN ADAMS: I appreciate that and I appreciate  
23 your statements.

24           Let me try to get your views on this binding  
25 arbitration question which, I think, many feel is the most

1 significant aspect of the proposal. The proposal reads in  
2 part: "Montgomery County Council shall provide by law for  
3 collective bargaining with binding arbitration with an  
4 authorized representative of the Montgomery County Police  
5 Officers." How is it that you square that language with  
6 the notion that it doesn't mean binding arbitration for  
7 salaries and cost of living and the like? How can the County  
8 Council read that and understand that it means collective  
9 bargaining as far as you say it means here tonight? It seems  
10 rather clear just on the face of it and I am a bit perplexed  
11 by it.

12 MR. SVERTESKY: I think somewhere between the  
13 initial drafting and the fact that we had to go back about  
14 three or four weeks into the process, based on a County  
15 Attorney's opinion, to redraft the entire petition and start  
16 from zero again in terms of signatures, somewhere along the  
17 line I think the distinction between our intent or recommend-  
18 ing binding arbitration on non-interest dispute issues was  
19 lost. We have, on the public record, communicated our intent  
20 that we do not advocate binding any interest arbitration.  
21 We will do so, assuming it passes in November, to the Council  
22 in subsequent work sessions on creation of this entire  
23 mechanism to carry out the referendum issue.

24 MR. KATZ: And are happy to go about it now. We  
25 will certainly go on record for the Council and the County

1 Executive now that that is exactly what we are asking.

2 The language squares also because there will be  
3 binding arbitration on certain disputes, but on interest  
4 disputes certainly fact finding would be sufficient.

5 CHAIRMAN ADAMS: I think the problem is, of course,  
6 the amendment as drawn doesn't make the distinction between  
7 interest disputes and others. And, under your approach that,  
8 gee, this doesn't mean binding arbitration on everything,  
9 one could say, well, the County Council passed a collective  
10 bargaining law with binding arbitration on lunch hours and  
11 that would meet sort of the test it is up to the County  
12 Council.

13 I guess the concern I have is, as someone who is  
14 trying to look at the charter not this November 5th, but  
15 through time, is that I think that the position -- personally  
16 I think that the position you all are taking is a reasonable  
17 one but it is not at all clear that you all will be the  
18 officers or the leading spokespeople for the group or even  
19 that the FOP will be the agent as things work out through  
20 the authorized representative, as things work out through  
21 time. So, the county is left with the dilemma of having this  
22 language which states very clearly "collective bargaining  
23 with binding arbitration" and some future group could come in  
24 and say, to sue the County Council or something, because  
25 the binding arbitration didn't include the interest.



1 MR. KATZ: I think in any kind of court action  
2 the judge has to go back to the intent of the drafters.  
3 When you have public statement on top of public statement  
4 that says what we recommend and what we meant to say in our  
5 position was not binding interest arbitration, you know, I  
6 think the suit would be frivolous.

7 CHAIRMAN ADAMS: I appreciate that but unfortunately  
8 there is a legal document and if the language is clear you  
9 don't look at the intent. It is not absolutely clear what  
10 will happen.

11 Are there others that --

12 MR. SVERTESKY: I don't know that it is crystal  
13 clear that it must be binding arbitration on all possible  
14 issues. I would say quite the opposite.

15 CHAIRMAN ADAMS: Are there others?

16 MR. BANKSON: You would concede this is unclear?

17 MR. SVERTESKY: I would say it is ambiguous, yes.

18 MR. BANKSON: I would like to understand how this  
19 happened. You had an initial draft which made it clear the  
20 distinction between fact finding and binding arbitration and  
21 that fell out somewhere along the line? What was the County  
22 Attorney's opinion?

23 MR. KATZ: The original drafters of the petition  
24 were given to understand it was their purpose to summarize  
25 via the petition what was to go on the ballot and the actual

1 language, the actual meaning of the language would be drafted  
2 by the County Council. Actually, what happens is exactly  
3 the opposite and because of this foul up that was the reason  
4 we went before the County Council later and asked them to  
5 place on the ballot a collective bargaining question without  
6 recommending or hopefully without recommending against it.

7 But, in any event, they weren't of a mind to do  
8 that. There was a very short time to act and the language  
9 that was drafted is what you see but, by the same token, the  
10 language is such that it has to have a reasonable interpreta-  
11 tion. And, we submit that a reasonable interpretation is  
12 just that, binding arbitration on non-interest disputes.

13 MR. BANKSON: I understood Officer Svertesky's  
14 testimony to be that it had been drafted with this in it at  
15 some point and there was a change which was brought about by  
16 the County Attorney's Office.

17 MR. KATZ: The original drafting was such that it  
18 would be fair to call it a summary of what was attempting to  
19 be done.

20 MR. BANKSON: And it wasn't in charter provision  
21 language?

22 MR. KATZ: That is correct.

23 MR. BANKSON: But it did mention fact finding for  
24 interest type issues?

25 MR. KATZ: No, it didn't. I think under the

1 original language it is certainly much easier to see this sort  
2 of thing. It wouldn't have been binding arbitration across  
3 the board as some people have interpreted what we have before  
4 us now.

5 MR. BANKSON: I don't think we are talking about  
6 what it could be. I think we are taking about what it could  
7 be based on this clear language and the legal doctrine that  
8 if the language is explicit you don't look at the legislative  
9 history or intent of the drafters because that would not be  
10 anything the voters would look at in adopting the amendment.

11 CHAIRMAN ADAMS: Are there any others? Bill Chen.

12 MR. CHEN: Allen, did you get an opinion from the  
13 County Attorney that said that the language here is adequate  
14 for guiding the County Council in preparing legislation to  
15 comply with the proposed charter amendment?

16 MR. KATZ: I didn't get an official opinion, no.  
17 I am not aware of an official opinion from the County  
18 Attorney's office.

19 MR. CHEN: Well, how does the County Council --  
20 Suppose you had a situation with a police officer who said,  
21 okay, we now have got this charter that has been adopted  
22 by the voters of Montgomery County and we want a collective  
23 bargaining statute with binding arbitration and you prepare  
24 something and you have a Council member introduce it and  
25 then the library workers decide to have one and the Council

1 says we are going to give to the police officers but not  
2 the library workers. Do you think that is possible under  
3 this charter amendment?

4 MR. KATZ: Yes, it is. It says police specifically.

5 MR. CHEN: No. It says to prohibit strikes or  
6 work stoppages by police officers. That is what it says.  
7 Are you saying this is adequate to say that it only applies  
8 to police officers?

9 MR. KATZ: Yes.

10 MR. CHEN: What happens when every other county  
11 employee of a different department who decides that now the  
12 police officers have got their collective bargaining why  
13 can't we have it or we have got rights that because we are  
14 public workers that are just as important as police officers  
15 and we work on snow days and have many of the same problems  
16 that police officers have and the county has an obligation  
17 to treat us the same way as they treat the police officers.  
18 Don't you think the same arguments that justify this type  
19 of a charter amendment for police officers are also applicable  
20 to other county employees?

21 MR. SVERTESKY: Certainly.

22 MR. KATZ: And that is the Council's decision and  
23 if that is what they would like, otherwise, if somewhere down  
24 the road if they don't want to do that then the other  
25 employees can petition for the same sort of referendum.

1 MR. BANKSON: What happens to the situation that  
2 may then obtain where the cases say, and I have heard of  
3 cases, that you have got to have a charter amendment and  
4 the charter amendment -- or state legislation -- and the  
5 charter amendment of Montgomery County permits it as to  
6 police officers but does not permit it as to other local  
7 public employees in Montgomery County? What happens in that  
8 situation?

9 MR. SVERTESKY: Well, you have got a situation now  
10 in the Meet and Confer, for example, for the last three years  
11 the Police Department has been the only employee group  
12 represented in Meet and Confer. The rest of the employees  
13 are not represented. Now, if they want to be represented  
14 they have to comply with the Meet and Confer Employee/  
15 Employer Relations Act which is the process for representation  
16 and certification.

17 MR. DALRYMPLE: The mechanisms are there for them  
18 if they chose to do it?

19 MR. SVERTESKY: That is right.

20 MR. KATZ: Are you saying is there a due process  
21 question? Is that what you are trying to get at?

22 MR. CHEN: I think you are saying it is discrimi-  
23 natory as written, aren't you?

24 MR. DALRYMPLE: I think there is a lot of problems  
25 with that.

1 CHAIRMAN ADAMS: I don't know that there is a legal  
2 discrimination. There is a public policy question of whether  
3 the voters of Montgomery County want to pass an amendment  
4 that simply sets it up for police or not. One might argue  
5 it might be better if this were generic kind of proposal but  
6 it is not.

7 Mr. Dalrymple?

8 MR. DALRYMPLE: As written there is no maximum or  
9 minimum as to what can be included in collective bargaining  
10 as written, isn't that right?

11 MR. SVERTESKY: Maximum or minimum --

12 MR. DALRYMPLE: Of any event, of any function of the  
13 department. You said it wasn't your intention to include  
14 interest disputes but you don't get that out of reading this.  
15 What is to stop -- Suppose this went through and was approved.  
16 What is to stop the County Council from passing a law that  
17 provides for collective bargaining, to reach the absurded,  
18 to determine whether the day after Christmas or the day  
19 after Thanksgiving was going to be a holiday, and that is  
20 the only thing that allowed collective bargaining --

21 MR. SVERTESKY: That is an unreasonable interpreta-  
22 tion of the intent here.

23 MR. DALRYMPLE: Well, I think it gets back to what  
24 several people have said, that this is clear, they shall  
25 pass a law for collective bargaining. But it doesn't say for

1 what or not for what.

2 MR. KATZ: Now there is no question that all of the  
3 issues that came up would be under the purview of collective  
4 bargaining. In other words, bargaining towards an agreement,  
5 the two sides that bargain. As we know it now it is a public  
6 sector and, of course, it is not under the NLRA. However,  
7 I think the problem people are talking about is this question  
8 of binding arbitration. At what point does that have to be  
9 employed. If you try to oversimplify, obviously, the thing  
10 becomes so unreasonable that we have one of those clear cases  
11 where everybody could say it is arbitrary.

12 It is our position that if the Council then  
13 adopts reasonable language, certainly the type of language  
14 we are proposing here, then there would be no challenge by  
15 our group and our group represents not only members of the  
16 Fraternal Order of Police, the largest police organization,  
17 but also members of other police organizations.

18 MR. DALRYMPLE: But anyone who is inclined to vote  
19 for this with the assurance the collective bargaining would  
20 not be applicable to the interest issues --

21 MR. KATZ: Binding arbitration only.

22 MR. DALRYMPLE: I understand, okay.

23 MR. SVERTESKY: Collective bargaining would be  
24 applicable to all issues.

25 MR. DALRYMPLE: All right. The arbitration would not

1 be. Anyone who wanted that assurance would not have that  
2 assurance on this amendment any more than you have the  
3 assurance that they may only make one silly little issue  
4 subject to binding arbitration.

5 MR. SVERTESKY: I would think that arbitration  
6 issues would be taken as class type provisions, not specific  
7 issues.

8 MR. DALRYMPLE: Well, don't you have to define that  
9 in the enabling legislation? I think that is the whole point  
10 here.

11 MR. SVERTESKY: Obviously you have a County Attorney  
12 When this language was revised felt that this language here  
13 was adequate even assuming we are talking about binding  
14 arbitration across the board.

15 MR. DALRYMPLE: He would have to, I think.

16 MR. SVERTESKY: I think if you have collective  
17 bargaining and there are certain types of disputes subject  
18 to binding arbitration, then you enacted a law that is  
19 consistent with this referendum question.

20 CHAIRMAN ADAMS: Let me ask Mr. Dalrymple's question  
21 in a slightly different way. Are you saying that this does  
22 not authorize binding arbitration on interest issues?

23 MR. SVERTESKY: No. I am saying it could be  
24 interpreted that way. It could be interpreted as collective  
25 bargaining with binding -- And that is where the ambiguity



1 exists.

2 CHAIRMAN ADAMS: Let me state my understanding of  
3 this and see if you all agree. This authorizes collective  
4 bargaining with binding arbitration for every imaginable  
5 issue. You are saying that if the County Council were to  
6 enact an ordinance that had collective bargaining with binding  
7 arbitration for certain class of issues but did not include  
8 binding arbitration for salaries, cost of living and what  
9 you call interest issues, that that would be an acceptable  
10 ordinance. Or if they were to pass collective bargaining with  
11 binding arbitration for everything that would also be  
12 acceptable.

13 MR. SVERTESKY: Let me say this. In addition to  
14 the former being acceptable, that would be exactly our intent.

15 CHAIRMAN ADAMS: That would be what you would want.

16 MR. SVERTESKY: That would be our intent.

17 CHAIRMAN ADAMS: It would also be a reasonable  
18 interpretation that they are now authorized to have collective  
19 bargaining with binding arbitration on the interest issues.

20 MR. KATZ: That is just the point. This doesn't  
21 give all the specifics in any event. It is up to the  
22 Council to write this and the Council, if, in its wisdom,  
23 decides to go with binding arbitration across the board,  
24 then that is what they are going to do and I don't think we  
25 can challenge that. However, if they wish to have it so

1 that -- apparently there is a great amount of unrest with  
2 regard to binding arbitration on interest disputes -- We  
3 are saying it certainly would be reasonable to have binding  
4 arbitration on the non-interest disputes.

5 MR. DALRYMPLE: What if it said may provide instead  
6 of shall provide? Then your legislation -- I don't think you  
7 really get the nitty gritty in the charter but you get it in  
8 the legislation.

9 CHAIRMAN ADAMS: The problem is I think they want  
10 shall provide collective bargaining.

11 MR. SVERTESKY: And shall provide binding arbitration  
12 on the following issues.

13 MR. DALRYMPLE: When you do this --

14 MR. SVERTESKY: Collective bargaining in itself  
15 we didn't feel is sufficient enough because there again --  
16 You know, the key to any kind of labor relations is how do  
17 you resolve disputes. We believe that the fairest way in  
18 certain issues to through arbitration. That is why we  
19 inserted that. "It shall be collective bargaining with  
20 binding arbitration on certain disputes."

21 MR. DALRYMPLE: I don't necessarily disagree with  
22 that. I guess my point is I am not sure this --

23 CHAIRMAN ADAMS: If you had the opportunity  
24 obviously you would write a few extra words in there.

25 MR. SVERTESKY: What we would put there would be

1 collective bargaining with binding arbitration on the follow-  
2 ing types of disputes with a representative of County police  
3 officers. I think that would be --

4 MS. BOERGERS: My question may have been touched  
5 on partially by both of you but I would like you to clarify  
6 it for everybody else. According to our report, we recommended  
7 that the Meet and Confer process be improved and that a  
8 mediation and fact finding process be added in order to have  
9 a mechanism for impasse resolution that is not evident in the  
10 current Meet and Confer legislation. Can you just explain  
11 why that is not sufficient going beyond the fact that you  
12 are not seeing any movement and you are not seeing any of  
13 that happening. If that could happen, what would be the  
14 problem with that?

15 MR. SVERTESKY: That is like putting Corinthian  
16 leather seats in an old VW, you know. You have got two --  
17 It is two distinct systems, two distinct processes in labor  
18 relations, Meet and Confer, and then you go into collective  
19 bargaining. You can't kind of beef up Meet and Confer  
20 because when you do beef it up in the key areas where it  
21 needs to be beefed up it is no longer Meet and Confer. It is  
22 a totally different process. And, you can add on mediation,  
23 you can add on arbitration, you know, various permeatations  
24 of arbitration/conciliation/mediation and you are still left  
25 with the fact that you are not negotiating to begin with.

1 What will inevitably happen under Meet and Confer is that  
2 you will sit there and you will have two monologues and at  
3 the end of the monologues you would go to mediation and that  
4 is where the real negotiations will be conducted as opposed  
5 to sitting down and negotiating at the table and when those  
6 issues -- If there is a dispute after negotiations, then you  
7 go to mediation. But, with Meet and Confer you have nothing.  
8 You might as well simply go to Meet and Confer from the  
9 beginning.

10 MR. KATZ: The end product of Meet and Confer are  
11 position papers and under the current Montgomery County law  
12 they are non-binding position papers and they say that in  
13 each of the position papers. There can be separate position  
14 papers where you disagree on some points or they can be joint  
15 position papers where you agree and you both sign off to-  
16 gether. In any event, even in the joint position papers --  
17 it has been written in the two that has been developed between  
18 the Fraternal Order of Police and the County that they are  
19 non-binding, period, and they spell out why or where they are  
20 non-binding and we cite the law that makes them non-binding.

21 If you go to some other system whereby there is an  
22 agreement, which is what, of course, the police want, --  
23 Call it what you will. It is not Meet and Confer. It really  
24 is collective bargaining and collective bargaining is just  
25 not that much of -- That is the idea of collective bargaining,

1 two groups that sit down and negotiate and come out eventually  
2 with an agreement.

3 CHAIRMAN ADAMS: The problem I have with this is it  
4 seems to me that the proposal that we made, while obviously  
5 not saying we are for collective bargaining, but by talking  
6 about a mediation process and an impasse process and calling  
7 for a neutral fact finder is very close to what it is you  
8 are describing. I can tell you if I were the personnel  
9 director and I knew at the end of the process there was an  
10 independent fact finder was going to come in and look at all  
11 of this and issue a report, I would negotiate very seriously.

12 MR. SVERTESKY: You wouldn't negotiate because you  
13 couldn't negotiate. All you could so was meet and confer.

14 CHAIRMAN ADAMS: To me that sound symantical.

15 MR. SVERTESKY: It is not symantical and I think  
16 that you would have to sit, as we did for the last three  
17 years in these sessions, to really get a feel of what is going  
18 on and I think it is very difficult to sit and say to you  
19 that there is a very clear distinction between meeting and  
20 conferring and negotiations. You know, a lot of it is done  
21 with, you know, power whether it is actual perceived leverage  
22 from both sides, give and take on propositions, things like  
23 that. You have none of that in Meet and Confer. You have  
24 simply two individuals who are sitting down and hoping to  
25 develop a dialogue and where they agree, fine, and where they

1 don't, all right, end of process.

2 MS. BOERGERS: Except that the mediation and fact  
3 finding is part of the play then you can go to that extra  
4 route.

5 MR. SVERTESKY: As I said earlier, you know, when  
6 you go into Meet and Confer knowing what it is, you are not  
7 going to get anything developed substantively until you go  
8 to mediation. You are just going to be sitting there prepar-  
9 ing for mediation.

10 MS. BOERGERS: Well, is that necessarily a bad  
11 thing?

12 MR. SVERTESKY: Well, it is because any time you  
13 have to -- You know, the parties should sit down and bilatera  
14 agree upon conditions of employment or whatever the issue  
15 happens to be. That is the --

16 MS. BOERGERS: That is kind of the ideal world.

17 MR. SVERTESKY: That is the goal of it. You have  
18 to come back and face these people every year.

19 CHAIRMAN ADAMS: But if I am the County Executive  
20 or his or her representative, I just don't want to get into  
21 a situation where a fact finder comes in and says, you were  
22 terrible in this process or you didn't pay any attention --

23 MR. SVERTESKY: They are not going to say that.

24 CHAIRMAN ADAMS: Well, if they don't negotiate,  
25 if they don't come to some agreements and concede some points

1 it seems to me that the fact finder ought to --

2 MR. KATZ: Say they do that. Say they come in and  
3 say, this is horrible, you haven't done anything. These  
4 people are entitled to thus and so and the County Executive  
5 says he is right, I am going to make other arrangements and  
6 then he comes up with a non-binding position paper. What is  
7 to prevent him from changing his mind in three months.

8 You know, now that I think about it again, I was  
9 right before. I think I will just leave the conditions the  
10 way they were before. This is a non-binding paper. It says  
11 so right there. It is not legally binding. So there is no  
12 agreement and that is what Meet and Confer is about.

13 CHAIRMAN ADAMS: I guess my sense is that you  
14 underestimate the power that you would have, say, to use a  
15 report by this independent fact finder. I would think that  
16 the press and opinion leaders in the county would take some-  
17 thing like that very seriously. Maybe you all don't agree.

18 MR. SVERTESKY: No. I don't necessarily agree that  
19 there is going to be a public outcry over a fact finder's  
20 independent judgment on a particular issue.

21 MS. BOERGERS: Can I argue the other side of that  
22 question for a minute? I guess we could look at some of the  
23 court opinions in regard to Larry Hogan's negotiations with  
24 the county employees to see how far they got with a court of  
25 law saying that he violated collective bargaining processes

1 and where the county employees got in that court of law versus  
2 an independent fact finder. They didn't get very far with  
3 that. Perhaps, you know, maybe they are right, that while it  
4 might add something it wouldn't add sufficiently.

5 MR. SVERTESKY: And plus the whole key here in  
6 November is that nothing is binding to begin with.

7 CHAIRMAN ADAMS: I recognize that point. Are there  
8 other questions.

9 I would like to ask in this system you have other  
10 charter provisions, existing charter provisions, that provide  
11 for merit system for all county employees and then you have  
12 this system which says the police may collectively bargain  
13 with binding arbitration. Isn't that a little bit like havin,  
14 belt and suspenders. I mean what would you be willing to --  
15 Do you really feel you need both systems. Do you really want  
16 to negotiate from a series of guarantees that you already  
17 have? What of those guarantees might you be willing to bar-  
18 gain away to get other kinds of benefits?

19 MR. KATZ: Do you want us to state that in public?

20 CHAIRMAN ADAMS: Just give us an example.

21 MR. SVERTESKY: I think there are merit principles  
22 and there is the civil service system. And, I think a lot  
23 of people get confused between a merit principle and a  
24 civil service system and it comes out as kind of a merit  
25 system. You know, there are merit principles and they are



1 well defined in the scope of bargaining in every collective  
2 bargaining agreement and legislation that we see in the  
3 country and there is probably as many as 40 states that per-  
4 mit public safety employees to bargain collectively.

5 But, those type of things where you have certain  
6 merit principles, they are totally beyond the scope of  
7 bargaining. They are outside the scope of bargaining. And,  
8 that has to do with hiring and firing and discipline and  
9 promotional processes and things like that. Where you get  
10 involved in some of the other grey areas is what has  
11 traditionally come under the civil service system such  
12 as the number of holidays and things. That is not a merit  
13 principle.

14 MR. KATZ: We understand you when you talk  
15 about merit principle to talk in terms of, I guess, historically  
16 Jackson's time, the reason that a merit system came about in  
17 any event. The mere fact that another party gets in won't  
18 sweep out all the current civil servants which I have been  
19 told happened a long time ago.

20 CHAIRMAN ADAMS: I guess what I am wondering  
21 though is if you get in a situation where you have a series  
22 of non-negotiable merit principles, hiring and firing, you  
23 are then asking for a system to bargain on top of those  
24 benefits and that sort of gives you a double protection that  
25 I would worry about also. Wouldn't you have to rewrite the

1 merit system clause and regulations to attempt to marry them  
2 with the existence of collective bargaining or are you saying  
3 you basically want both?

4 MR. SVERTESKY: I think there is no doubt that if  
5 you were to bring a full fledged collective bargaining system  
6 into this county, there would have to be some fairly signifi-  
7 cant revisions to the personnel regulations; whether you want  
8 to talk about superimposing them or you want to talk about  
9 rethinking the role of the personnel board and the provisions  
10 of the powers of the CAO and other things, it would be for  
11 the Council's consideration. But, I think that at this point  
12 you can install this collective bargaining system into the  
13 county regulations with some minor changes to the personnel  
14 regulations.

15 MS. BOERGERS: The part of the merit system I am  
16 concerned with is the part that is written into the charter.  
17 Assuming Question A passes some of the detail of the merit  
18 system will be taken out of the charter. We can't automatically  
19 assume that. Question A could fail and Question F could pass  
20 and we would be bound with some pretty detailed descriptions  
21 of what the merit system will cover. Even if Question A  
22 passes and some of those details are taken out, we will  
23 still have as part of our charter the Uniform Salary Plan  
24 and I am very concerned about the fact that while you are  
25 talking about collective bargaining for the police officers,

1 once you negotiate a particular salary plan that then must  
2 be turned over to the whole of the county employees.

3 MR. SVERTESKY: That is probably a real central  
4 problem when you start talking about collective bargaining  
5 and it was probably one of the most frustrating things for  
6 us to sit in Meet and Confer and discuss salaries when we  
7 are representing 650 police officers knowing that the county's  
8 retort was, wait a minute, you know that half of percent  
9 means X number of millions of dollars because we have to give  
10 it to everybody. It was a very frustrating experience  
11 needless to say because we suddenly took on the task of  
12 representing 6000 Montgomery County employees.

13 What could be an interpretation of a uniform pay  
14 plan to be kind of an umbrella effect as opposed to a list  
15 of Grade One through Grade 40 that would be totally consistent  
16 and would marry collective bargaining with that concept of  
17 a uniform -- In other words, a uniform plan, but it is not  
18 one plan where you have to plug everybody in regardless of  
19 the diversity of their task or jobs with the county with some  
20 grade letter. I think you can have --

21 CHAIRMAN ADAMS: Let me ask you this though. If  
22 what you got your collective bargaining was a 10% pay increase -

23 MR. KATZ: Are you talking about cost of living  
24 increase?

25 CHAIRMAN ADAMS: Well, let's say cost of living is

1 eight or something and you negotiated a 10% increase, wouldn't  
2 that affect every employee under the Uniform Salary Plan?

3 MR. SVERTESKY: The way the Uniform Salary Plan  
4 is interpreted now it would have to go across the board.

5 CHAIRMAN ADAMS: That is the point. The notion  
6 of a different grade --

7 MR. KATZ: However, let me submit, if the cost of  
8 living raise was merely, for example, \$2500 per person that  
9 would also be uniform. That may weigh more heavily for the  
10 median policeman as opposed to a median librarian. That  
11 would be uniform. The Uniform Pay Plan as such it is just  
12 a matrix. If you are a Grade 14 you might be between this  
13 area and this area. You are paid at Grade 14 level only  
14 because that is the amount of money you are making.

15 CHAIRMAN ADAMS: Are there further questions.

16 MR. CHEN: I apologize but I have had a little  
17 bit of experience with charters. You used the term "public  
18 safety employees". What kind of employees are they? How  
19 would you like to define that?

20 MR. KATZ: For purposes of this referendum  
21 question --

22 MR. CHEN: No.

23 MR. KATZ: We are talking about police.

24 MR. CHEN: No, no. You have used the term "public  
25 safety employees". I am asking who you mean by that, only

1 police officers?

2 MR. SVERTESKY: In the traditional sense, if you  
3 look at that terms as it applies to other jurisdictions, we  
4 are talking about police officers and fire fighters. Here  
5 we are talking about police officers.

6 CHAIRMAN ADAMS: Other further questions?

7 (No response.)

8 CHAIRMAN ADAMS: Thank you very much.

9 We will now ask some representatives of the  
10 County government -- Mr. Hilliard. Thank you for coming out.  
11 If you could just state your names and positions that would  
12 be of help. And take 10 minutes or whatever to speak to  
13 this question.

14 MR. HILLIARD: Yes. My name is Clinton Hilliard.  
15 I am Personnel Director for Montgomery County Government.

16 MR. TORGESEN: Jim Torgesen. I am the Assistant  
17 to the Personnel Director for Labor Relations.

18 CHAIRMAN ADAMS: Thank you for coming.

19 MR. HILLIARD: Mr. Chairman and members of the  
20 Commission, I would like to begin by simply reading a  
21 statement on Ballot Question F which was prepared by the  
22 County Executive.

23 After reviewing proposed Ballot Question F which  
24 would provide for collective bargaining with binding arbitra-  
25 tion for the County Police I oppose the amendment. The

1 principal reason for this position is my consistent opposition  
2 to compulsive arbitration of fiscal issues. In my view,  
3 elected officials must be accountable for such issues as part  
4 of the budget process. Compulsory arbitration interferes with  
5 the responsibility of those officials to the electorate by  
6 transferring fiscal decisions to outside parties.

7 The Charter Review Commission has studies collect-  
8 ive bargaining issues including the operation of the current  
9 Meet and Confer process, the problems of impasse resolution  
10 and the effect on collective bargaining of other charter  
11 provisions such as the requirement for a Uniform Salary Plan.  
12 I believe these issues require further discussions as the  
13 Charter Review Commission has recommended.

14 I felt it was important to read that to the  
15 Commission so that the position of the County Executive on  
16 this particular proposition or this issue rather would be  
17 clearly understood.

18 CHAIRMAN ADAMS: Thanks.

19 Would you all have further comments or do you just  
20 want us to proceed to questions.

21 MR. HILLIARD: If there are any questions we would  
22 be happy to answer them.

23 MR. TORGESEN: No, I don't have any thing.

24 CHAIRMAN ADAMS: I guess the first question would  
25 have to be that you state that the County Executive is

1 opposed to this amendment because it provides for binding  
2 arbitration on fiscal issues and yet we have heard the  
3 representative of the FOP say that it does not. Could you  
4 speak a little to how you read the language and why you come  
5 to that view when they apparently read it in a different way?

6 MR. HILLIARD: Well, the language I think that has  
7 been expressed is open to a variety of interpretations. It  
8 does not exclude what would normally be termed interest  
9 arbitration. It is not excluded. And, therefore, the range  
10 of interpretation that could be considered reasonable is  
11 quite broad.

12 CHAIRMAN ADAMS: My understanding is that what these  
13 folks are proposing is by no means unique. I mean a number  
14 of state and local government employees operate under  
15 essentially this kind of provision. I don't know the number  
16 of states that have laws like this, but this is not unusual.  
17 Mr. Hilliard, particularly I know have been in other juris-  
18 dictions. Could you all speak to a little bit to any  
19 experiences you are aware of about collective bargaining with  
20 binding arbitration for police in other jurisdictions and  
21 how that worked? I understand the County Executive's general  
22 feeling that he is not providing arbitration on fiscal  
23 matters, but could you give us a little of the reasoning as  
24 to why that position make sense in your mind from experience  
25 you have seen in other places?

1 MR. HILLIARD: Well, I have not personally operated  
2 under a public sector collective bargaining machinery that  
3 involved interest arbitration so I couldn't speak directly  
4 experientially to that. I think the basic concerns, the  
5 concern expressed in the County Executive's statement, and  
6 I really can't elaborate very much on that. I think the  
7 basic reason for the position is fairly clear. I have  
8 personally no experience with a system which involves interest  
9 arbitration.

10 CHAIRMAN ADAMS: Let me try this another way. If  
11 the amendment clearly read in the way that FOP explain they  
12 mean it to read; that is not binding arbitration on interest  
13 issues, fiscal issues, would the County Executive have a  
14 different viewpoint? Is the County Executive opposed to  
15 collective bargaining or is he opposed to collective bargain-  
16 ing with binding arbitration on non-fiscal matters. Do you  
17 know that or do you have personal feelings that you would  
18 like share on --

19 MR. HILLIARD: No, I really don't know that. I  
20 really couldn't speak for the Executive on the issues that  
21 have been discussed. So it would really be inappropriate for  
22 me to attempt to speak on behalf of the Executive on that.

23 CHAIRMAN ADAMS: Let me try this. As I understand  
24 it, the police are saying, look, we are safety, public safety  
25 employees. We don't want to have the right to strike. We



1 shouldn't have the right to strike. Our national organization  
2 says we won't have anything to do with that. And, yet, we  
3 have a system in the county, the Meet and Confer Law, that  
4 really doesn't give us the chance to properly, strongly  
5 negotiate for what we believe in. So, if we are willing to  
6 give us the right to strike, we have got to have some kind  
7 of stick, if you will, or something that will give us an  
8 ability to have our views heard and the only alternative to  
9 a right to strike is to give them a legitimate negotiating  
10 position would be binding arbitration. What is flawed in  
11 that rationale and also if you could speak a little bit about  
12 the experience in the county with Meet and Confer so we would  
13 have a better sense of the limitations or positive aspects  
14 of that.

15 MR. HILLIARD: I think you have to make certain  
16 assumptions and one of the assumptions you have to make is  
17 the right to strike as a presumption. I think that is a  
18 tremendous leap. I think generally it is considered that  
19 public employees, except to the degree that there is a  
20 specific provision to the contrary, generally do not have the  
21 right to strike.

22 As far as the experience with Meet and Confer,  
23 the -- It is a system designed to have issues presented,  
24 discussions on issues, to resolve issues where there are  
25 differences, and to jointly develop what is called a position

1 paper that clarifies what the issues are that are being  
2 recommended for implementation.

3 To my knowledge, the provisions of the position  
4 papers have, in fact, been honored. That there has been no  
5 instance that I am aware of in Montgomery County government  
6 where provisions that are set forth in a position paper have  
7 been ignored by the government. That is my understanding  
8 of the experience.

9 So, I think to the degree that the Meet and Confer  
10 process was designed to give an orderly forum for exchange  
11 of ideas, a forum where results of discussions could be put  
12 in written form with some specificity and would serve as a  
13 basis for actions and procedures and implementation of various  
14 processes in the county government; that that, in fact, has  
15 happened.

16 CHAIRMAN ADAMS: If I might just break in for a  
17 moment, unfortunately we failed to get on the record the  
18 police's specific views of the Meet and Confer process but  
19 rather heard general statements. But I thought I remembered  
20 hearing from them in our previous discussions that at one  
21 time or another the whole system kind of broke down and  
22 there wasn't even a position paper written. I don't have  
23 any details.

24 MS. BOERGERS: That was last year if I recall --

25 MR. TORGESEN: That was two years ago.

1 MS. BOERGERS: The first year was -- Mr. Gilchrist  
2 was the County Executive, as I recall.

3 MR. TORGESEN: The first year was under Mr. Gleason  
4 and the last two years have been under Mr. Gilchrist.

5 MS. BOERGERS: The first time the process broke down  
6 and the position papers were not written, as I understand it,  
7 and everybody just kind of went home was two years ago.

8 CHAIRMAN ADAMS: What happened there?

9 MR. TORGESEN: During those particular sessions,  
10 one of the primary issues of discussion dealt with the retire-  
11 ment issue and was felt by the County that it was not a  
12 sufficient data base in order for us to make reasonable  
13 proposals to the FOP. And, through agreement, informal  
14 agreement, it was never put in writing. It was agreed that  
15 the County would engage the services of Aetna, who was  
16 responsible at that time for administrating the retirement  
17 system and providing acturial services, to do a major update  
18 and cost analysis on a variety of 20-year retirement pro-  
19 posals and resulted in a significant cost to generate those  
20 proposals. So, it was not something that was taken lightly  
21 but it was felt it was necessary to provide a reasonable  
22 data base so that decisions could be made. That data base  
23 could not be provided within the time frame of our discussions.  
24 On that basis, because that was a primary issue of discussion,  
25 the parties agreed not to fall through with a formal position

1 paper.

2 MS. BOERGERS: Has that report been completed do  
3 you know?

4 MR. TORGESEN: That report has been completed.  
5 Upon its completion we had some additional problems. At that  
6 time we discovered some problems with the way that our credited  
7 service was being calculated which had a significant impact  
8 on the actuarial evaluation that was being done on a yearly  
9 basis. For that reason there were revisions that had to be  
10 made in those actuarial assumptions. As a result of the  
11 revising of the credited service and making sure that was  
12 brought up to accuracy, as a result of that we found that the  
13 cost for the proposals that we were considering under the  
14 20-year retirement were significant. And, that has resulted  
15 now in the County's rethinking the whole area for 20-year  
16 retirement in the context of -- Even if we begin to engage  
17 in more serious discussions and even lay out a proposal to  
18 the FOP it is going to result in a significant cost to the  
19 County and one which right now is not a commitment we are  
20 prepared to make.

21 MR. HILLIARD: Mr. Chairman, I might add also that  
22 one of the things we are doing in addition to that -- and  
23 this came out of the so-called Coleman Committee Report which  
24 was looking at various salary issues in the County government  
25 was a recommendation of a very careful scrutiny of some of

1 the assumptions involved in the evaluation of our pension  
2 program and we have gone out to get a second opinion. We  
3 have obtained another actuary to come in and look at the  
4 system and to give us a report. And, that actuary is collect-  
5 ing the data and we will have that report out in the late  
6 fall so there is active analysis of that problem.

7 The key point is that the retirement issues is,  
8 in terms of relationship between cost and retirement benefits,  
9 a significant issue. It is not an insignificant current  
10 or perspective or future financial, potential financial  
11 obligation on the part of the County and it is something that  
12 we want to look at very carefully before we commit ourselves  
13 to any change in the existing benefit structure.

14 CHAIRMAN ADAMS: Thank you.

15 In our report of May that I think you referred to,  
16 we suggested that the Meet and Confer Law could be strengthened,  
17 propose some mediation and ultimately the possibility of an  
18 outside fact finder. Our proposal was not that the fact  
19 finder's findings would be binding but rather that they would  
20 be public and apart of the process.

21 The representatives of the FOP indicated to us,  
22 as you have just heard, that they didn't think that process  
23 would carry much weight and, in fact, again their discussion  
24 by saying it was an indication of how or what a back burner  
25 issue all of this was to the County government, that our

1 recommendations have not been looked at. Could you talk  
2 a little bit about our recommendations, the possibility of  
3 improving the Meet and Confer Law, and speak to the question  
4 of whether this could be something the County government  
5 would be willing to look at seriously in the near term?

6 MR. HILLIARD: Well, I think it should be put in  
7 the context of what has been occurring since, I guess, late  
8 winter or early spring. I think there are two important  
9 occurrences. One is that we do have -- The only recognized,  
10 formally recognized, organization in the County government  
11 is the FOP. So the issue is not applicable to the other  
12 organizations since they are not formally recognized.

13 But, the issue of mediation, there is a mediation  
14 provision that is in existence right now in our relationship  
15 with the FOP. So there is provision for mediation. And,  
16 it is a very traditional kind of mediation provision. I  
17 can't speak to its effectiveness in this context because the  
18 mechanism has never been used nor has it been requested.

19 But, the second, I think, important occurrence is  
20 that effective last January the voting requirements for  
21 designation of a recognized organization were changed by  
22 amendment. That was effective, I believe, somewhere around  
23 the middle of January 1980. And, as a result there has been  
24 a significant increase in potential organizational activity.  
25 Right now we have a number of petitions and intervening

1 petitions that have been filed and we will be having --  
2 The Chief Administrative Officer has provided for, under  
3 the Employee/Employer Relations Law, will be meeting, in  
4 fact, next week to have discussions with each of the organi-  
5 zations concerning the units they have petitioned for.

6 So we are going through that process with a number  
7 of organization. And, I think it would be a untimely point  
8 at this point in time to begin introducing major changes in  
9 the law. The present Meet and Confer law, you look at its  
10 provisions, has really never been fully implemented and  
11 the process of recognition, which can be a fairly lengthy  
12 process, has really not reached any point of maturation in  
13 the County.

14 So, I think it is not that the County government is  
15 not interested in considering the observations and recommenda-  
16 tions of the Commission, but we are sort of right in the midst  
17 of one of the very fundamental and major provisions of the  
18 law, namely, the establishment of representation rights.  
19 And, it would not be the best time to begin a dialogue of  
20 significant changes in the law right on the eve of potential  
21 representation elections.

22 MS. BOERGERS: Can I mention one point? My  
23 understanding of the current mediation provision is that it  
24 can only be implemented and put into effect if both sides  
25 agree to go to mediation. To me there is a very significant

1       lack in --

2               MR. HILLIARD: I would like to respond to that.

3               MS. BOERGERS: Obviously you wouldn't go to  
4 mediation about the things you wouldn't want anybody to hear  
5 anything about, you know, such as from the police's point of  
6 view, 20-year retirement. Our proposal, I think, is really  
7 substantially different. While the names are the same and  
8 the same mediation and fact finding, it is either party can  
9 chose.

10              MR. HILLIARD: I would like to respond to that.  
11 The basic concept of mediation involves mutual consent and  
12 I think that in terms of traditional definition of the  
13 concept of mediation it is very difficult to have an effect-  
14 ive mediation process between two parties if one of the  
15 parties does not want to be involved in the mediation pro-  
16 cess.

17              MS. BOERGERS: Take the example of fact finding.

18              MR. HILLIARD: That is a different process alto-  
19 gether.

20              MS. BOERGERS: But the process we are recommending  
21 is mediation if either party wants to go to it and if that  
22 breaks down then you go to fact finding. It is kind of an  
23 automatic step assuming either party wants to go to fact  
24 finding.

25              MR. HILLIARD: Well, without getting into the



1 specific merits of the provision, I think the key thing is  
2 that -- The provision does exist. There is no history of  
3 denial by either party of a request to go to mediation  
4 because there is no history of request for mediation by either  
5 party. So, in the context of the County's experience, I don't  
6 think that the voluntary mediation apparatus can be judged  
7 on the basis of any statistical profile or utilization  
8 analysis. The mechanism is there. It simply has not been  
9 used.

10 MR. BANKSON: Would it be a fair expression of your  
11 opinion that you think Meet and Confer has not had time  
12 enough to work and there hasn't been enough experience with  
13 it yet and should be left the way it is for now?

14 MR. HILLIARD: Well, that really is kind of a  
15 basic policy decision that I have not discussed with the  
16 Executive. This is an area where the Executive has a great  
17 deal of concern and I think there is some sensitivity. I  
18 would be reluctant to say that -- Well, I think it is a  
19 factual situation. In terms of the entire County government  
20 obviously with only one formal recognized organization, it  
21 is hard to talk about the needs and experience of all of  
22 the County employees, that that picture will not emerge.  
23 I don't know what the County Executive's position, for  
24 example, would be on the issue of collective bargaining  
25 without interest arbitration or some changes to the Meet and

1 Confer approach.

2 I do think that the issue of timing is kind of  
3 important. I think we are in rather an unusual circumstance  
4 where we have one organization that has gone through the  
5 formal recognition procedures, has gone through the Meet and  
6 Confer process. And, then we have a group of organizations  
7 that are just petitioning for recognition under the same basic  
8 law and it makes it a little difficult to both talk about  
9 from experiential point what is the best approach. It also  
10 makes it difficult to involve those organizations in a dis-  
11 cussion of changes in the law since we don't have an estab-  
12 lished pattern of formal recognition in existence at this  
13 point.

14 I expect that once we get down stream and the issue  
15 of representation by the other employee organizations is  
16 resolved, obviously at that point in time the environment and  
17 the forum for discussion will be very significantly changed.  
18 But, I really can't in all fairness, you know, represent  
19 the County Executive's position on specific policy issues  
20 of whether we ought to make certain specific amendments in  
21 the existing law at this point.

22 CHAIRMAN ADAMS: Bill Chen.

23 MR. CHEN: Mr. Hilliard, I am not going to ask any  
24 questions about the mechanics of the system. Did you hear  
25 the definition of the FOP representative of public safety

1 employees of the county? Did you hear that testimony?

2 MR. HILLIARD: Yes.

3 MR. CHEN: Would you agree with that testimony?

4 MR. HILLIARD: Which part of it?

5 MR. CHEN: The definition of public safety employees?

6 MR. HILLIARD: I think he used the term police  
7 officers.

8 MR. CHEN: Yes, that is right, and fire fighters.

9 MR. HILLIARD: My recollection is he used the  
10 term police officers.

11 MR. CHEN: That is right. They also used the term  
12 of fire fighters. Do you agree with that?

13 CHAIRMAN ADAMS: In the amendment they used the  
14 term police officers.

15 MR. CHEN: I am not talking about the amendment.  
16 I asked for their meaning of the terminology when the term  
17 public safety employees was used.

18 MR. HILLIARD: Oh, the generic term public safety.  
19 Generally that usually is -- Well, would be an umbrella term  
20 to cover police, fire, sheriff, and corrections employees.

21 MR. CHEN: Is that terminology that is pretty well  
22 accepted in your profession?

23 MR. HILLIARD: I think so, yes.

24 MR. CHEN: Would it include -- I think the County  
25 places security guards for public buildings in Montgomery

1 County Court House and this building, would it include those  
2 types of employees also?

3 MR. HILLIARD: Well, generally it -- That varies.  
4 Generally, if they are security officers in the context which  
5 the County is a security officer, they are really border line.  
6 They can be either not in or outside of that. Typically for  
7 people involved in security functions, the issue is whether  
8 or not they have certain police powers. If they have those  
9 police powers they generally fall within the definition.  
10 There are a number of employees who serve essentially as  
11 security officers or guards who do not have specific police  
12 powers or are not charged with the responsibility, for  
13 example, of arrest or search and seizure and they very often  
14 fall outside the definition of public safety employees.

15 CHAIRMAN ADAMS: Mary Boergers?

16 MS. BOERGERS: I am not sure exactly what my  
17 question is but during the year we have been discussing  
18 collective bargaining as a subcommittee, one of the major  
19 frustrations of employees, both police and the other employee  
20 organizations that are not officially recognized under Meet  
21 and Confer is the length of time it has taken whereby little  
22 or no action has taken place. I am referring to the fact  
23 that 1968 was when teachers first got collective bargaining.  
24 We now have last year collective bargaining for Montgomery  
25 College employees. They started trying to get collective

1 bargaining statewide through a state law back in 1970 and it  
2 has been bouncing around now for 10 years. Do you have any  
3 answer to the employees? Like you say wait and they say how  
4 long do we have to wait.

5 MR. HILLIARD: I am not saying wait. I am saying  
6 that the employees right now are involved in a recognition  
7 process and that process is occurring under an existing body  
8 of law which has specific procedures and provisions for  
9 recognition. I just think it would be inappropriate to begin  
10 talking about major changes in the system at the time that  
11 very fundamental process is occurring.

12 I am not saying wait, you know. We are talking  
13 about a schedule which anticipates, if our expectations are  
14 correct, that sometime in November, you know, within two  
15 months from now we will be having representation elections  
16 assuming that the, you know, required minimum signatures are  
17 verified and all those procedural requirements are met. So  
18 we are talking about having a pretty clear pattern of formal  
19 recognition and representation before the end of this year.  
20 I am not saying wait.

21 I can't address the issue of why -- There are so  
22 many institutional variations when we talk about public  
23 employee organization and employer/employee relations  
24 provisions. If you look at the number of varied state and  
25 local provisions, they are all over the map. I have

1 operated under, when I was in the State of California, under  
2 two separate public sector laws, one for state and local --  
3 one for local government, excuse me, not state government,  
4 local government and one for schools which were just completely  
5 different systems. And, one started off with the label of  
6 Meet and Confer and it evolved essentially into something  
7 very close to collective bargaining in a number of situations  
8 in that we had comprehensive agreements and there have been  
9 several tests of -- even though the law says they are  
10 essentially non-binding, functionally they are treated almost  
11 the same as collective bargaining.

12 The other extreme was in public education until a  
13 few years ago there was another piece of legislation that  
14 had variations in it that first of all didn't have any  
15 provision for exclusive representation, had representation  
16 patterns based on -- for academic faculty people and K  
17 through 12 community college system which provided for what  
18 they called kind of a portional coalition negotiating, maybe  
19 based upon estimates, proportional work force represented  
20 by the various organizations. So, you know, people only  
21 have a nine-member people, one organization would have three  
22 seats, another one one seat, another one two seats. And, it  
23 was just a very diverse kind of function. That has changed  
24 very rapidly.

25 The variations among the states and localities in

1 terms of employee/employer relations almost defy any standard  
2 or normal kind of description. They are tremendously varied.  
3 Why certain patterns have evolved in the State of Maryland  
4 and Montgomery County I really can't answer those questions.  
5 But, I think it is a major public policy issue. It is a  
6 major public administration issue in terms of how you manage  
7 the systems that are agreed and I do think it is a system of  
8 some importance. I don't know of any particular standard  
9 that exists nationally in this area. There are some basic  
10 elements in terms of right to join organizations, basic  
11 representation rights, that seem to be common. But, when you  
12 go beyond that as to the on-going relationship between the  
13 employer and employee organizations it is a constellation of  
14 varied systems.

15 CHAIRMAN ADAMS: Personally my own view would be  
16 that I recognize the point that you make that it is not timely  
17 to deal with changes in the system as you are having these  
18 representation elections, but I would hope that you would  
19 at a minimum sort of hear the message that the police and  
20 us that there might down the road not too far be a serious  
21 look at whether the existing Meet and Confer structure is  
22 adequate or whether there might be a move in some of the  
23 directions we suggested to strengthening the process.

24 MR. HILLIARD: I appreciate that. Let me just  
25 very briefly summarize. I hope nothing I have said suggests

1 that the County government doesn't consider this a very  
2 important issue and is not mindful of the Commission's studies  
3 and recommendations.

4 I suspect that all these items are going to get  
5 very careful and serious consideration. I just think --  
6 There are a number of issues I simply have not had an  
7 opportunity to discuss with the Executive and it would be  
8 inappropriate for me to speak on his behalf when, in fact,  
9 he has no idea of what I am saying.

10 CHAIRMAN ADAMS: I understand. Let me just ask  
11 one final question. The representatives of the FOP suggested  
12 that there were certain merit principles that were well  
13 defined in the hiring and firing aspects that were beyond the  
14 scope of bargaining. The concern that I would have is if  
15 we leave the existing merit system principles and then you  
16 add collective bargaining to that, that the government is  
17 not in a very strong position. It is sort of like, okay,  
18 you have got all of this and now we start to bargain. Is  
19 it correct in your view that there are these merit principles  
20 that are beyond the scope of bargaining and the notion of  
21 hiring or firing or would -- and do you agree with them  
22 that the merits between the existing merit system law and  
23 provisions and a collective bargaining system would require  
24 only minor changes or would it require more major changes  
25 to marry those two decisions?



1 MR. HILLIARD: My own personal and professional  
2 experience has been that it has to be done very carefully.  
3 There are, in fact, a number of issues. Some of this is done  
4 by the merit system law itself. For example, in the area  
5 basically of compensation, the merit system law removed that  
6 from the jurisdiction of the Personnel Board and in my  
7 judgment appropriately. That is an executive responsibility.

8 There are some major areas that have to be looked  
9 at carefully to determine what is an appropriate arena for  
10 the merit system which really speaks to some basic public  
11 policy issues, the manner in which employees -- First of all,  
12 how people become employees and then what happens to them in  
13 terms of promotions, appointments, and a number of other  
14 actions which are clearly merit system issues.

15 But, historically, perhaps simply because of the  
16 lack of a more appropriate place to or more appropriate arena  
17 to have those issues resolved, a variety of working conditions  
18 and compensation issues have been put into the "merit or  
19 civil service system" which historically was not the initial  
20 purpose of those systems. When you look at the basic purpose  
21 of having open access to government employment, ensuring that  
22 people are treated fairly, assuring that people are competent  
23 to perform their jobs, that at the point of selection and  
24 consistently throughout their employment, that promotions  
25 and other employment decisions internally are done on the

1 basis that is in compliance with public policy generally  
2 concerning non-discrimination and also meet certain, again,  
3 requirements of demonstrated job-related fitness for perform-  
4 ing the duties.

5 Those issues and the protection that surrounds  
6 that part of the merit system is what I refer to as the core  
7 of the merit system. Really the historic foundation purposes  
8 of the initial structuring of the institutions that we now  
9 call civil service and merit system in the United States.

10 The other issues, a variety of issues, involving  
11 leave, vacation, sick leave, benefits, salary and other  
12 operating conditions of employment are more removed from that  
13 core. And, a number of those, I think, appropriate are  
14 essentially appropriate for the scope of representation within  
15 formalized employer/employee relationship system. And, the  
16 provisions in the Federal Government, for example, clearly  
17 acknowledge that while a number of economic items are not  
18 under the negotiation process, a number of working condition  
19 items clearly are and that they are really separate and apart  
20 from the core objectives and domains so to speak of the  
21 formalized Civil Service system.

22 So, I think there will have to be adaptation. Some  
23 of them, I think, have already occurred in the compensation  
24 area which will make at least that part of the system a lot  
25 easier to deal with. But, it will have to be done carefully.

1 CHAIRMAN ADAMS: Thank you very much.

2 I think there are no further questions. We  
3 appreciate your coming tonight.

4 I would like to move to Question E, the proposal  
5 to -- Proposed charter amendment to prohibit the sludge  
6 trenching in residential areas. We have invited two  
7 representatives of the Citizens for Responsible Disposal  
8 and Delegate Robin Ficker. If the three of you would join  
9 us. I gather we are going to have a slide show here.  
10 Before the slide show introduce yourselves and perhaps  
11 explain to us what Citizens for Responsible Disposal for  
12 the record is and the role that the three of you played in  
13 designing and putting Question E on the ballot.

14 MR. KNIGHT: Delegate Ficker has graciously agreed  
15 to have us precede him and perhaps I can set some context.  
16 I am Jim Knight. I am here representing relatively a new  
17 group known as Citizens for Responsible Disposal. With me  
18 is Mr. Fred Ryland, one of the attorneys who has been  
19 assisting us in our efforts. CRD was formed back in the  
20 spring as a citizens response to a proposal to take some  
21 1100 to 1200 acres in the upper county for the purposes of  
22 sledge entrenchment. The effort that was mounted I suppose  
23 could be called multi-faceted. We presented our case to the  
24 County Council in public hearing and simultaneously I think  
25 it can fairly describe as the inspiration of Delegate Ficker.

1 We mounted a campaign to bring this question before the public  
2 and gained the necessary signatures to put it on the ballot.

3 If I may ask you to turn your attention for a  
4 moment to the screen behind you. I think I could put this  
5 perhaps in context. It is difficult sometimes to get people  
6 to focus on something as aesthetically undesirable as sewage  
7 disposal.

8 What you see there is described as a passable scene.  
9 It is a site in upper county known as Site 30 before sludge  
10 was entrenched. The process is one of digging six foot deep  
11 two foot wide trenches all over this area and putting raw  
12 sewage sludge mixed with lime in it. If we look at it a  
13 little bit later this is the same area. What you see is  
14 known as leachate. It is a liquid carrying some of the  
15 products of the material that has been buried there to the  
16 surface driven by the gases that are generated. I might  
17 add that in a somewhat optimistic view of the County and  
18 others including the Environmental Protection Administration  
19 who had in some way or other espoused sludge entrenchment  
20 as a method of sewage disposal. This wasn't supposed to  
21 happen or it could be prevented by good engineering. I might  
22 add for the record I am an engineer with responsibilities  
23 in fields of geology and I know whereof I speak.

24 The two problems we have here is the peculiar,  
25 in terms of the national picture, a situation in the County

1 with the soil we have and the highly fractured rock underlying  
2 those soils. It is quite typical of the County. It is one  
3 good reason why they shouldn't engage in this type of a  
4 process.

5 If we continue on just a bit you will see -- These  
6 are taken spread over the area that you saw in the first  
7 slide. There are two problems here. This material could  
8 get into surface water and perhaps more importantly into the  
9 ground water. And, if you have been following the recent  
10 work that Representative Moffett has been starting on to help  
11 prohibit the further contamination of ground water either by  
12 chemical, toxic chemicals, or other materials, I think we see  
13 a chance here for the County to be in the lead.

14 That scene you see thickening as it is is caused  
15 primarily by methane gas bubbling up at the top of the  
16 picture and driving materials, liquid materials, out.

17 This is the final slide. I just want to point out  
18 to you in large measure this is what it is all about, not  
19 only preservation of the land but protection of our under-  
20 ground water supply. That is one of the most precious  
21 resources that we have and one which has been abused to a  
22 terrible extent.

23 There are no more slides. I think I can say in  
24 a very quick summary that it is an abominable process. There  
25 is no place for use as a sewage disposal method particularly

1 in this County. It has -- As I said, in addition to the  
2 obvious asethetic damage, there is a very real problem  
3 associated with contamination of ground water and contamina-  
4 tion of surface water.

5 I think Mr. Ryland could speak to other matters  
6 concerning the question.

7 MR. RYLAND: My name is Fred Ryland. I am an  
8 attorney. I practice in the District of Columbia but I also  
9 practice in Maryland. My practice is predominately legisla-  
10 tive but I do not pretend to be -- Like Sam Irvin, claimed  
11 that he was a country lawyer and then proceeded to slice up  
12 people with constitution language. I am not Sam Irvin of  
13 municipal law and I don't pretend to have any specific  
14 expertise in that area. So I come as a lay attorney to  
15 discuss some of the concerns that people have raised about  
16 this charter amendment and the way the Citizens for Responsible  
17 Disposal feel about this.

18 We did not draft the Charter Amendment E but when  
19 it was proposed to us it was hardily endorsed. It was  
20 endorsed as a resonable exercise of citizen initiative to  
21 restrict spending and licensing powers for the County govern-  
22 ment for inappropriate activities.

23 There are predominately three legal type issues  
24 that have been raised, brought to my attention, regarding  
25 the propriety of this charter amendment. I would say they